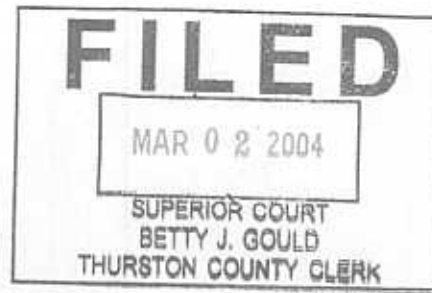


1 ☒ EXPEDITE
2 ☐ Hearing is Set
3 Date:
4 Time:



7
8 **STATE OF WASHINGTON**
THURSTON COUNTY SUPERIOR COURT

9 MIKE KREIDLER,
10 INSURANCE COMMISSIONER,

11 Petitioner,

12 v.

13 WESTERN UNITED LIFE
14 ASSURANCE COMPANY,

Respondent.

CIVIL NO. 04-2-00406-1

VERIFIED
PETITION FOR APPOINTMENT
OF RECEIVER FOR THE PURPOSE
OF REHABILITATING A
DOMESTIC INSURER

15 **I. JURISDICTION AND VENUE**

16
17 1.1 This Verified Petition for Appointment of Receiver for Purpose of
18 Rehabilitating a Domestic Insurer ("Petition") is filed pursuant to RCW 48.31.190, and the
19 authority granted the Insurance Commissioner for the State of Washington pursuant to RCW
20 §§ 48.02.060; 48.05.455; 48.31.030; 48.31.040; 48.31.111; 48.31.190; and 48.99.020. This
21 Court has jurisdiction pursuant to RCW 48.31.111 and 48.31.190(1).

22 1.2 Venue is proper in Thurston County pursuant to RCW 48.31.190(1).

23 **II. PETITIONER**

24 2.1 Petitioner, Mike Kreidler, Insurance Commissioner, is the duly elected
25 Insurance Commissioner of the State of Washington and the head of the Office of the
26

VERIFIED
PETITION FOR APPOINTMENT
OF RECEIVER

1 Insurance Commissioner ("OIC"), whose primary offices are located at 5000 Capitol
2 Boulevard, Tumwater, WA, 98501. Acting on behalf of the Insurance Commissioner in this
3 receivership matter is James T. Odiome, Deputy Insurance Commissioner for Company
4 Supervision.

5 6 **III. RESPONDENT**

7 3.1 Respondent, Western United Life Assurance Company ("Western United"), is
8 a domestic stock insurance company that holds a certificate of authority as a life insurer
9 pursuant to chapter 48.05 RCW. Western United's home office is located at 601 W. First
10 Ave., Spokane WA 99201.

11 **IV. AUTHORITY OF THE COURT TO APPOINT A RECEIVER**

12 4.1 Western United operates as a domestic stock insurer pursuant to chapter 48.08
13 RCW, and has been issued a certificate of authority to operate as a life insurer pursuant to
14 chapter 48.05 RCW.

15 4.2 Western United has been operating under an administrative Consent to
16 Supervision Order issued by the Commissioner. The Consent to Supervision Order was
17 required in order to protect the assets and financial integrity of Western United while its
18 parent companies and affiliates undergo a financial reorganization. See Exhibit A, attached
19 hereto.
20

21 4.3 The Insurance Commissioner is authorized to apply to the Court for an order
22 directing the rehabilitation of an insurer upon any one or more of the grounds set forth in
23 RCW 48.31.030. The Court shall appoint the Insurance Commissioner and his successors as
24 Receiver for rehabilitation, and the Insurance Commissioner may appoint one or more deputy
25
26

1 commissioners or designees to act on his behalf. RCW §§ 48.31.040(4); RCW 48.99.020(1);
2 and RCW 48.99.020(6).

3 4.4 The grounds for rehabilitation set forth in RCW 48.31.030(9) and (15) include
4 that Western United, through its directors, has consented to being placed in receivership for
5 the purpose of rehabilitation.

6 4.5 The Board of Western United has consented to Western United being placed in
7 receivership under the supervision of the Insurance Commissioner and this Court. See Exhibit
8 B, attached hereto.

10 **V. GROUNDS FOR THE APPOINTMENT OF A RECEIVER**

11 5.1. The majority of the members of the Board of Directors have consented to
12 having Western United placed in receivership under the supervision of the Insurance
13 Commissioner for the purpose of rehabilitation. See Exhibit B, attached hereto.

14 5.2 Western United's parent companies and affiliates are in a state of financial
15 uncertainty, as evidenced by their filing of bankruptcy on February 4, 2004, in the United
16 States Bankruptcy Court for the Eastern District of Washington.

17 5.3 Deputy Insurance Commissioner Odiorne has informed Western United of the
18 immediate need to place the company in receivership and that this Petition would be filed
19 forthwith.

22 **VI. RELIEF REQUESTED**

23 The Insurance Commissioner requests the following relief:

24 A. That the Court appoint Mike Kreidler, Insurance Commissioner, as Statutory
25 Receiver; James T. Odiorne, Deputy Insurance Commissioner for Company Supervision, as
26

1 Receiver; C. Wayne Metcalf III, Supervisor, as Chief Deputy Receiver; and Marshall
2 McGinnis, OIC Company Licensing Manager, as Deputy Receiver.

3 B. That the Court enter an Order of Rehabilitation in accordance with the
4 applicable state statutes including directing the Receiver to take possession of the property of
5 Western United, to deal with its property and business in his own name or in the name of
6 Western United in Receivership, to conduct the business of Western United, to take such steps
7 toward the removal of the causes and conditions which made rehabilitation necessary as the
8 Court may direct, to administer the assets of Western United under the general supervision of
9 the Court, and to give notice to all creditors who may have claims against Western United to
10 present such claims; directing Western United to surrender and to take all steps necessary to
11 transfer to the Receiver its premises, assets, records, and documents pertaining to the business
12 of Western United; and directing banks and financial institutions holding funds or deposits by
13 or on behalf of Western United that they are prohibited from offsetting those funds or deposits
14 against amounts due or owed to them by Western United; and
15

16 C. For such other and further relief as this Court deems necessary.
17

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

VERIFICATION

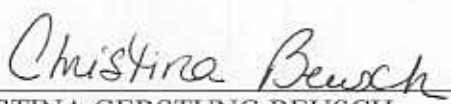
I, James T. Odiorne, Deputy Insurance Commissioner, am over 18 years of age and have personal knowledge of the facts stated herein. I do solemnly declare and affirm that to the best of my knowledge and belief the facts recited in this Petition and the Exhibits attached hereto are true and correct.

DATED this 26th day of February, 2004.


JAMES T. ODIORNE,
Deputy Insurance Commissioner

RESPECTFULLY SUBMITTED this 2nd day of March, 2004.

CHRISTINE O. GREGOIRE
Attorney General


CHRISTINA GERSTUNG BEUSCH,
WSBA No. 18226
Assistant Attorney General
Attorneys for Office of the Insurance Commissioner



OFFICE OF

In the Matter of

INSURANCE COMMISSIONER No. G 2003-107

**WESTERN UNITED LIFE ASSURANCE
COMPANY,**
A Washington domestic insurer.

)
) **CONSENT ORDER FOR SUPERVISION**
) **OF A DOMESTIC INSURER**
)

The Office of the Insurance Commissioner for the State of Washington ("OIC") has received information that Western United Life Assurance Company ("Western United" or "Respondent") is part of a holding company system in which certain non-insurance affiliates are threatened with insolvency. See WAC 284-16-310(7); RCW 48.31.030(5). The OIC and the Respondent wish to protect the policyholders of Western United and reduce the possibility of any adverse consequences to the insurer, its creditors, and the public because of the financial condition of certain of its non-insurance affiliates. In order to resolve this matter without the commencement of formal court proceedings, the Respondent admits the following Stipulations are true and consents to the entry of this Order.

STIPULATIONS

1. Respondent, Western United Life Assurance Company, is domiciled in Washington and presently holds a certificate of authority issued by the OIC to transact life insurance business.

2. Respondent recognizes and consents to the jurisdiction of the OIC and acknowledges that grounds exist for the OIC to issue this Consent Order under Title 48 of the Revised Code of Washington and Title 284 of the Washington Administrative Code.

3. Respondent is an indirect wholly-owned subsidiary of Metropolitan Mortgage & Securities Co., Inc. ("Metropolitan"), a holding company with the same controlling party as Summit Securities, Inc. ("Summit"). Metropolitan has a certain Management, Receivables Acquisition and Underwriting Agreement with Respondent (the "Agreement"). Both Summit and Metropolitan are currently experiencing financial difficulties, whereby they anticipate that forecasted cash flows will be inadequate to meet certain debt obligations. In a Press Release dated November 3, 2003, Metropolitan and Summit temporarily suspended payments of monthly dividends on all series of the company's preferred stock. The Press Release indicated that the dividend suspension was part of Metropolitan's and Summit's efforts to conserve liquidity, and that the companies had cash of approximately \$19 million and estimated its cash needs over the next three months for operations and maturing obligations to be approximately \$37 million. The Press Release also stated that Summit and Metropolitan had engaged financial advisors to assist in evaluating their strategic options.

4. The OIC is currently performing a limited scope examination of Respondent as of September 29, 2003 pursuant to Title 48 of the Revised Code of Washington, to ascertain the nature and extent of affiliate exposures to Summit and Metropolitan, and to evaluate the impact on Respondent's financial condition should Summit and Metropolitan's financial condition continue to deteriorate. It is expected that this examination will expand to a full scope examination.

5. Based upon concerns regarding the financial condition of Summit and Metropolitan, and their potential inability to provide capital support and fulfill certain obligations under existing management and service agreements to Respondent, Respondent has consented to the issuance of this Consent Order.

Mailing Address: P.O. Box 40255 • Olympia, WA 98504-0255
Street Address: 5000 Capitol Blvd. • Tumwater, WA 98501



6. The purpose of this Order and the intent of the OIC and the Respondent in entering into this Order is to maintain the financial integrity and independence of the Respondent and to assure that Respondent continues to operate in accordance with the insurance laws of this state.

7. Respondent acknowledges that the purpose of this Consent Order is solely to enter the Order herein and does not preclude any agency, officer or subdivision of this State from instituting such administrative, civil or criminal proceedings as may be appropriate at any time. Respondent acknowledges that nothing herein precludes the OIC from taking any appropriate regulatory action at any time, including but not limited to initiation of delinquency proceedings.

NOW THEREFORE THE INSURANCE COMMISSIONER ORDERS, AND THE RESPONDENT AGREES THERETO, THAT:

8. Respondent will operate in accordance with Title 48 of the Revised Code of Washington and regulations adopted thereunder, and in accordance with this Consent Order.

9. A person or persons, acting on behalf of the OIC, will be identified by the OIC to whom Respondent must report and obtain approvals in accordance with this Consent Order. Respondent also acknowledges that its insurer affiliates, Old West Annuities & Life Insurance Company and Old Standard Life Insurance Company are or will be placed in a similar supervision in their home states, Arizona and Idaho, respectively. The reasonable costs incident to the OIC performing under this Consent Order, as determined by the OIC, shall be charged against the assets and funds of Respondent and shall be paid when fixed and determined by the OIC.

10. The Respondent, its officers, directors, agents, employees, representatives, or those acting in concert with them shall not do any of the following things without the prior approval of the OIC:

- a. sell, dispose of, convey or encumber any of its assets, investments, property, or its business in force;
- b. withdraw any funds from its bank accounts or other depositories;
- c. lend any of its funds or assets;
- d. invest any of its funds or its assets;
- e. transfer any of its property;
- f. incur any debt, obligation or liability, either directly, indirectly, or contingently, except for the issuance of new and renewal insurance contracts in the ordinary course of business;
- g. merge or consolidate any or all of the Respondent's operations with another company;
- h. enter into any new contract, service contract, management contract, agency agreement, or reinsurance contract or treaty;
- i. engage in any transactions with or involving affiliates, including but not limited to purchasing of mortgage loans or acquisition, through foreclosure or otherwise, of property;
- j. issue any securities;
- k. pay any dividends;
- l. increase salaries or benefits of any officer, director, or shareholder; and
- m. pay to any officer, director, or shareholder, any bonus, dividend, or payment deemed preferential by the OIC.



11. Respondent shall have the following additional responsibilities:
 - a. furnish the OIC with a copy of its monthly financial statements and monthly operating reports by the 25th of the month following the month for which such reports are prepared; and
 - b. furnish to the OIC in a timely manner such information as the OIC may request including, but not limited to, Respondent's revenues and outlays, profit and loss projections.
12. Respondent will obtain a commitment from Metropolitan and Summit to maintain Respondent's infrastructure, including but not limited to, appropriate employee retention programs and maintenance of physical facilities or make alternative arrangements satisfactory to the OIC to permit the efficient and continued normal operations by Respondent.
13. This Stipulation shall be effective immediately after being signed by the OIC and shall remain in effect until terminated by mutual written agreement of the parties or by order (upon motion or sua sponte) of the Insurance Commissioner. The parties acknowledge that factors that will affect the likely continuance of the supervision of the Respondent by the OIC include the solvency and credit risks of Respondent's parent companies and affiliates, any issues identified in the ongoing examination, and the general financial condition of Respondent given its type, volume, and nature of business.
14. Respondent is aware of its right to notice and a hearing at which it may be represented by counsel, present evidence and cross-examine witnesses. Respondent irrevocably waives its right to such notice and hearing and to any court appeals relating to this Consent Order.
15. Respondent states that no promise of any kind or nature whatsoever, except as expressly contained in this Consent Order was made to it to induce it to enter into this Consent Order and that it has entered into this Consent Order voluntarily.
16. Respondent attests its consent to this Stipulation and Order is authorized and evidenced by a duly adopted resolution of the Board of Directors and the signatures of the required number of members of the Board of Directors affixed hereto.
17. This Consent Order may be signed in counterparts.

IT IS SO ORDERED, THIS 24th DAY OF DECEMBER, 2003.

Mike Kreidler
Insurance Commissioner



IT IS CONSENTED THERETO BY THE BOARD OF DIRECTORS OF
WESTERN UNITED LIFE ASSURANCE COMPANY.

Cantwell Paul Sandfur, Jr.

RESIGNED

Date: _____

Reuel Swanson

Reuel Swanson

Date: 12/22/03

John Van Engelen

John Van Engelen

Date: 12/23/03

Irv Marcus

Irv Marcus

Date: 12-22-03

Robert Stephen Corker

Robert Stephen Corker

Date: 12/22/03

Gary Brajcich

Gary Brajcich

Date: 12-22-03

John Trimble

John Trimble

Date: 12/22/2003

Sam Smith

Samuel X. Smith

Date: 12/22/2003

William Snider

RESIGNED

Date: _____



RESOLUTION ADOPTED BY THE BOARD OF DIRECTORS OF
WESTERN UNITED LIFE ASSURANCE COMPANY

The following resolution was duly adopted at a meeting of the Board of Directors of Western United Life Assurance Company on January 13, 2004.

RESOLVED:

The Insurance Commissioner's Office of the State of Washington has requested that the Board agree not to contest a petition for a court order of rehabilitation of Western United Life Assurance Company ("Western") should the Insurance Commissioner of the State of Washington ("Insurance Commissioner") deem such action to be necessary and such action is authorized by state law.

If the Board consents to the appointment of the Insurance Commissioner as the receiver for rehabilitation, greater privacy and confidentiality are afforded to Western.

Resolution is hereby adopted that the Board consents to the appointment of the Insurance Commissioner as the receiver for rehabilitation of Western in accordance with State law if receivership is determined necessary by the Insurance Commissioner, and such receivership is authorized by state law.

Request is made to the Insurance Commissioner that this request be treated as confidential, and kept in confidential files of the Insurance Commissioner, unless and until formal court action is necessary.

Request is further made that if court action is necessary, reasonable advance notice from the Insurance Commissioner be given to Western.

The Board retains the authority to modify or withdraw this Resolution if they determine it appropriate, but only following notice to the Insurance Commissioner.

ATTEST:

The undersigned is the Secretary of Western United Life Assurance Company, and the above resolution is a true and correct copy of the resolution duly adopted at a meeting of the Board of Directors at which a quorum was present on January 13, 2004.

Dated this 13th day of January, 2004



Reuel Swanson

Secretary